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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1961

## No. 298

HARRY KATZ, ET ALS.,

Appellants,

*versus*

GUS SINGERMAN, ET ALS.,

Appellees.

## *MOTION TO DISMISS APPEAL FROM SUPREME COURT OF LOUISIANA, AND IN ALTERNATIVE, TO AFFIRM SAID JUDGMENT, AND BRIEF IN OPPOSITION TO WRIT OF REVIEW TO SUPREME COURT OF LOUISIANA.*

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***AND***

***BRIEF IN OPPOSITION TO WRIT OF REVIEW TO SUPREME COURT OF LOUISIANA.***

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### *LACK OF JURISDICTION*

We submit there is no basis for any appeal to this Honorable Court, for the reason that such appeals are limited to causes falling within the purview of

U.S.C.A. Title 28, Sec. 1257:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> "(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> "(2) By appeal, where is drawn in question the

validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

We further submit there is no basis for any writ of certiorari herein for the reason that grant of such writs is limited to Subsection 3 of the aforesaid Title, which continues:

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States. June 25, 1948, c. 646, 62 Stat. 929."

Further,

Rule 19 1(a) of this Honorable Court:

precludes granting writs to review the decision of the highest court of a State, except where the following conditions are met:

"Considerations Governing Review on Certiorari

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

"(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court * * * ."

**The record in this matter is barren of reliance by appellants on any Treaty or Statute of the United States.**

**The validity of any Statute of the State of Louisiana has never been raised or challenged by these appellants previous to the present attempt to have this Court take jurisdiction.**

**These appellants have never heretofore attacked any law of Louisiana as being violative of any of their rights under any Federal statute, or any Federal decision.**

**Their application to this Court lacks citation to any part of the record where any Federal question was raised by them and was passed on adversely to their contentions by the State Court:**

Supreme Court of the United States Revised Rules
15(d), (e),
23(d), (f), (j)4.

In order that this Court might consider an appeal, or the granting of a writ herein, the Federal question should have been raised in the pleadings of the applicant long before now, and then in a direct and specific fashion, as provided by the **United States Statutes** and the **Rules of this Court.**

A mere reference to a United States Supreme Court case, referred to and discussed by a lower court, is not sufficient to give jurisdiction to this Court, as was held in:

*D. S. Osborne et al vs. R. A. Clark et al*, 204 U.S. 625, 51 L. Ed. 568:

> " * * to show that the Constitution of the United States was relied upon below, the plaintiffs in error refer to passages in the opinions of the court of chancery appeals and the supreme court, in which *Dartmouth College v. Woodward*, 4 Wheat.

518, 4 L. Ed. 629, was discussed, as establishing the point. But we are unable to see that those passages prove the fact."

The appellants have placed all of their reliance upon

*Watson vs. Jones*, 13 Wall 679, 80 U.S. 679, 20 L. Ed. 666 (1812)

However, **in *Watson vs. Jones* the plaintiff sought possession of church property.**

**In the instant case, the plaintiffs sought no property. The plaintiffs' prayer for relief, which is now quoted in its entirety, was only to enjoin men and women from sitting together at religious serivces in the Synagogue:**

"WHEREFORE, the premises and the annexed affidavits considered, your petitioners pray that this Honorable Court issue a temporary restraining order without the necessity of a hearing, **enjoining, restraining, prohibiting the Defendants in their capacities as officers, agents, servants and employees from authorizing or permitting, in any manner, the mixed or family seating of the sexes in the Chevra Thilim Synagogue, that said temporary restraining order be effective immediately.**

"Petitioners further pray that the Defendants in their capacities as officers and members of the Board of Directors of Chevra Thilim Congregation be ordered to show cause on a day and hour to be fixed by this Honorable Court why a preliminary injunction should not issue herein, **enjoining, restraining, and prohibiting the Defendants, their officers, agents, servants and employees from authorizing or permitting, in any manner, the mixed or family seating of the sexes in the Chevra Thilim Synagogue;**

"Petitioners further pray that the Defendants be duly cited to appear and answer this petition, that it be served in accordance with law, and that

> after due proceedings had, there be judgment herein in favor of your petitioners and against the Defendants in their capacities as officers and members of the Board of Directors of Chevra Thilim Synagogue, and that, in due course, **a permanent injunction be issued herein, restraining, enjoining and prohibiting the officers, agents, servants and employees from authorizing or permitting, in any manner, the mixed or family seating of the sexes in the Chevra Thilim Synagogue."**
>
> (All emphasis by us)

Thus, we see that the plaintiffs in this matter have prayed for no money, no property, and no possession of any of the Synagogue's property. All they sought was an injunction that would prevent men and women from sitting together at divine services.

Justice Hamlin,

in *Katz vs. Singerman*, 117 So. 2d 56, 238 La. 915 (1960),

when this matter was first before the Supreme Court of Louisiana, speaking for the unanimous Court, said:

(Bottom of first column, Pg. 59, 117 So. 2d):

> "Examination of the record herein discloses that plaintiffs' prayer is not for money, and that no monetary value is placed upon the alleged rights they seek to protect * * * ."

(Middle of second Column, Pg. 59):

> "Plaintiffs allege that they had made contributions for the South Claiborne Avenue Synagogue, and had bought pews, but they place no value on the pews, nor do they state the amounts of their donation. They made no attack upon any donations claimed to have been made by themselves or others."

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> "In reality, plaintiffs allege the violation of rights which they assert they must have under their form of worship. They state that if such violation were not permanently enjoined, they would be forced to worship elsewhere; they do not contend that no other place of worship existed for them."
>
> "We conclude that the rights alleged by plaintiffs to have been violated, have not been shown to have a monetary value. This Court does not have jurisdiction of this appeal and must, therefore, transfer it to a Court of proper jurisdiction * * *."

*Watson v. Jones* involved not only the possession of Church property, but, in that case, there was a definite religious doctrine that was being violated in opposition to the terms of a clear, binding and un-equivocal trust instrument.

In *Watson v. Jones*, there was a higher judicatory authority within the frame-work of the Church, with power to decide problems and issues and with power to cause the member Churches to follow the rulings of the higher body.

However, in this case, aside from the fact that no possession of any property is sought, there is no higher judicatory authority within the frame-work of the Jewish religion than the individual Congregation itself. There is no body within Judaism with binding or judicatory authority over the Congregations that follow the Jewish faith.

Judaism, of whatever branch, is not of such a definite nature that it can be defined and confined as to doctrine and practice by anyone, or any authority higher than the Board of Directors and the membership of the various Congregations.

This doctrine has been enunciated and followed previously in attacks upon family seating as pertaining to

Orthodox Jewish Synagogues, in:

> *Katz v. Goldman*, 33 Ohio App. Reports (Haney) 150, 168 N.E. 763 (1929)
>
> *Solomon v. B'Nai Jeshurin*, N. Y. Comm. Pleas 49 Howard's Practice Reports 263 (1875).

The same doctrine was followed in the Courts of South Carolina, in a case involving the use of an organ, in an Orthodox Jewish Synagogue when the use of the organ at divine services was sought to be enjoined.

> *State ex rel Abraham Ottolengui et al. v. G. V. Ancker et al.*, Vol. 2, S.C. 245 thru 286.

The Supreme Court of Louisiana, followed the aforegoing precedents:

> *Katz v. Singerman*, 241 La. 103, 127 So. (2d) 515 (1961)

Justice Summers, speaking as organ for the unanimous Court, in a well reasoned and finely written opinion, evidencing a sympathetic understanding for the problem perplexing Congregation Chevra Thilim, found:

* * * * *

> "In *Katz v. Goldman*, 168 N.E. 763, a case involving mixed seating, we feel the proper general attitude of Courts in matters of this nature was stated thus:
>
> '"It is a well settled rule of law that courts will not interfere with the ecclesiastical questions involving differences of opinion as to religious conduct, and especially where the members of the congregation in question have created by organic law a tribunal of their own for the settlement of differences, whose finality is supreme judgement.'"
>
> "It seems that many, many years ago there was a Rabbinical Court which made decisions on disputes in doctrine, but the Rabbinical Court was abolished

centuries ago, and, the Jews throughout the world since that time, at least here in America, have been organized as independent congregations."

* * * * *

In quoting from *Watson v. Jones*, Justice Summers continues:

* * * * *

"All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed."

The appellants imply that the membership of Chevra Thilim did not ratify or confirm the institution of family seating. However, the facts and the record indicate the contrary, to continue with the opinion of Justice Summers:

"The evidence shows that on two occasions the proposition of family seating was placed before the membership. On the first occasion, May 2, 1956, less than a majority voted for mixed seating, but on the second occasion, February 14, 1957, subsequent to the filing of this suit, the vote was as follows:

| | | |
|---|---|---|
| Total eligible voters | 322 | |
| | *Votes* | |
| For family seating | 193 | |
| Against family seating | 68 | |
| Not voting | 1 | |
| Total ballots cast | | 262 |
| For Rabbi Greenberg | 206 | |
| Against Rabbi Greenberg | 51 | |
| Not voting | 5 | |
| | | 262" |

* * * * *

"Appropriate at this point is the following language from *Katz v. Goldman, supra:*

' "To promote the cause of traditional or orthodox Judaism is not a definite religious doctrine based upon any principle so stationary in its character that a court would be warranted in defining the exact course to pursue * * * ' "

* * * * *

"Congregation Chevra Thilim and the defendants here continue to profess to worship God according to the Orthodox forms and ceremonies and the record reveals that many of the recognized fundamentals, forms and rituals thereof are observed. It has an Orthodox Rabbi. We are impressed by the statement of the Rabbi of this Congregation and consider that his views are entitled to great weight. They are to the effect that, though the members of said congregation have adopted family seating, he considers them to be following the spirit, traditions and procedure of Orthodox Judaism.

"We find that the adoption of the resolution concerning family or mixed seating by the Board of Directors was within the authority provided by the Charter and By-Laws and did not violate the conditions in the donations in question, and is not such action by the Board that would permit this Court to properly interfere."

* * * * *

It is worthy of more than merely passing interest to observe that Justice Hamiter of the Supreme Court of Louisiana, in the instant matter, in a separate concurring opinion, observed:

"In my opinion the plea to the jurisdiction ratione materiae filed in this cause by the defendants is meritorious. An infringement of property, civil

> or political rights is not in dispute herein. Rather, at issue is merely the defendants' alleged violation of certain precepts important to Jewish worship. The question presented, in other words, relates solely to religious rights. Hence, the controversy is not subject to judicial determination.
>
> "Accordingly, I respectfully concur in the decree rescinding the issued injunction and dismissing plaintiffs' suit."

The position of Congregation Chevra Thilim, and its officers and directors, is buttressed by, and is fortified by the rock-bed of the Constitution of the United States of America, and the Constitution of the State of Louisiana, which guarantee freedom of worship:

> CONSTITUTION OF THE UNITED STATES OF AMERICA, FIRST AMENDMENT:
>
> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * * ."
>
> CONSTITUTION OF THE STATE OF LOUISIANA, ARTICLE 1, SECTION 4:
>
> "Every person has a natural right to worship God according to the dictates of his own conscience. No law shall be passed respecting an establishment of religion, nor prohibiting the free exercise thereof; nor shall any effort be given to, nor any discrimination made against, any church, sect or creed of religion, or any form of religious faith or worship."

The appellants in this matter have never raised any Federal or Constitutional question previously to their appearance before this Court.

The record will amply demonstrate that Congregation Chevra Thilim has repeatedly relied upon and urged the Constitutional bar to this proceeding.

We respectfully submit that this Honorable Court should decline jurisdiction, in this proceeding, and that this appeal should be dismissed, or, in the alternative, we submit that the decision appealed from is correct and should be affirmed.

We further submit this brief in opposition to the granting of a writ of review herein, and respectfully request that this Honorable Court refuse the issuance of a writ herein on all of the grounds set out.

Respectfully submitted,

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## CERTIFICATE

We hereby certify that copies of this brief have been duly served on Appellants, by mailing copies of same, via U. S. Mail, to G. Wray Gill and Gerard H. Schreiber, their attorneys, 1707 Pere Marquette Building, New Orleans 12, Louisiana, sufficient postage having been affixed thereto.

New Orleans, Louisiana, September ....., 1961.

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